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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1400 SIXTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036

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December 16, 1993

\* NEW YORK AND NEW JERSEY BARS ONLY

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20036

Re: Ex Parte Presentation  
MM Docket No. 92-266

Dear Mr. Caton:

This letter is submitted pursuant to Section 1.1206 of the Commission's rules to inform you of a written ex parte presentation by Fleischman and Walsh on behalf of its various cable clients regarding (1) the processing of Form 329 complaints by the Commission and (2) the processing of Form 393 rate determinations by local franchising authorities. Two copies of the written presentation, which is being delivered to the offices of the Chairman and each Commissioner and to Sandy Wilson, Chief of the Cable Services Division, are attached.

If there are any questions regarding this matter, please communicate directly with the undersigned.

Sincerely,



Seth A. Davidson

cc: Merrill Spiegel  
Maureen O'Connell  
James Coltharp  
John Hollar  
Sandy Wilson/12266

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**PROBLEMS WITH FORM 329 PROCESSING**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1. Despite indications that the number of Form 329 rate complaints being filed at the FCC has diminished, there continues to be a disturbingly high number of instances in which cable operators are receiving notification that a complaint has been rejected as defective after the operator has had to respond to the complaint.

2. The problem of untimely notification appears to be the result of several factors: first, it appears that the Commission's contractor is generally taking three weeks (and often longer) to review a complaint after it is received at the FCC; second, the FCC's rules require a cable operator to file a response to a complaint within 30 days after it is mailed by the subscriber; however, the FCC typically does not receive the complaint and begin the review process until several days after this 30 day period has begun; third, to ensure that their responses are received at the FCC before the 30 day deadline expires (as required by the rules), cable operators must complete and mail their responses several days prior to the deadline; and fourth, it generally takes several days for the contractor's notification rejecting a complaint to reach the cable operator, further increasing the chances that it will pass in the mail with the operator's response.

3. The current situation creates a number of problems:

- Wasted effort by cable operators (preparing and filing responses to invalid complaints)
- Additional paperwork burdens for the FCC (processing cable operator answers to defective complaints)
- Subscriber confusion (caused by the receipt of both a response from the cable operator and a defective complaint notice from the FCC).
- Uncertainty on "going forward" increases (because of uncertainty as to whether the "initial date of regulation" has occurred)

4. Other Form 329 Processing Issues:

- Complaints not served on cable operators. Cable operators are receiving FCC rejection notices regarding complaint forms that the operator never received. The concern is that there probably also are complaints on file at the FCC that the operator has not received but that have not been rejected.
- Complaints not on record at FCC. Cable operators are receiving (and responding to) complaints as to which the FCC's contractor has no record.
- Failure to reject defective complaints. Complaints that are obviously defective are not being rejected. In particular, complaints that are directed at basic tier rates (as is apparent from the bill attached to complaint) are not being rejected.

## **"Additional Information" Demands By Franchising Authorities**

1. Cable operators who submitted Form 393s to certified local franchising authorities in mid-November are beginning to receive demands for additional information regarding those submissions. The additional information demanded is often unnecessarily burdensome and irrelevant to the process of determining the reasonableness of basic service rates and equipment charges. (Examples of additional information requests are attached.)
2. Allowing unfettered additional information requests is inconsistent with Congress' expressly stated intent that the process of regulating rates not be administratively burdensome. It also conflicts with the FCC's desire for expeditious resolution of benchmark proceedings (as evidenced by the requirement that the process of reviewing rates be completed within 30 days), by effectively turning benchmark proceedings into cost-of-service proceedings.
3. Although the FCC permits local regulators to take up to 90 additional days to review of Form 393 benchmark submissions when necessary, it makes a mockery of the OMB-approved public reporting burden estimate to permit supplemental information requests that require several additional weeks of effort by the cable operator. Additional information requests should be limited to information that is needed to reconcile inconsistencies or correct omissions in the initial filing.
4. The risk posed by unnecessary demands for additional information (and resulting disputes) is that the regulatory process will be prolonged indefinitely. Although the FCC's rules provide that a decision should be rendered within 30 days (or, if added time is needed, up to 120 days), there is no actual deadline. If no limits are put on the franchising authority's demands for additional information, it is likely that decisions will not be rendered even after 120 days. Instead, it could be a month, six months, or even a year or more until the franchising authority rules; moreover, so long as an "accounting order" is issued after 120 days, refund liability will continue to accrue (for up to a year).
5. The FCC should reiterate that where a system's rate appears valid on the face of its Form 393, the franchising authority is not free to demand extraneous information. In particular, the Commission should issue clarifications regarding the following:
  - Franchising authorities should be required to state the basis of their additional information requests with specificity. Vague assertions that an operator's Form 393 may be "inaccurate" or that additional review may be needed should not justify open-ended fishing expeditions into a system's records. For example, if a franchising authority believes that the operator has miscalculated a portion of the Form (e.g., the number of basic channels), it should state the basis for that belief. Nor should the operator be required to state the "legal basis" for any assumptions or interpretations relied upon in completing Form 393 without some specific reference to the issue being raised.

- Franchising authorities may not demand information regarding rates charged in other systems. The "reasonableness" of a particular system's rates under the benchmark formula (whether for service of equipment/ installation) is determined by reference to that system; rates charged by other systems, whether co-owned, geographically proximate, etc., are irrelevant.
- Franchising authorities may not demand information regarding discount rates (other than bulk discounts). The instructions to Form 393 make clear that the form is to be completed using "standard non-discounted program service rates" and the number of subscribers receiving each tier. Information regarding discounted rates (such as senior citizen rates) and the system's compliance with the Act's "geographic uniformity" requirements are irrelevant to the determination of the reasonableness of a system's basic rate.
- Franchising authorities may not review a system's compliance with the "rate freeze." The rate freeze is a federally imposed requirement; compliance with the freeze raises issues that go well beyond regulation of basic rates. In addition, local freeze enforcement will inevitably result in inconsistent interpretations of the freeze.

**FCC BENCHMARK FORM 393  
ADDITIONAL INFORMATION REQUIRED**

**THE FOLLOWING EXPLANATORY INFORMATION IS REQUIRED OF EACH CABLE OPERATOR SUBMITTING FCC FORM 393 FOR BOARD REVIEW.**

**OPERATORS SUBMITTING MORE THAN ONE FCC FORM 393 SHOULD SUBMIT THIS ADDITIONAL INFORMATION SPECIFIC TO EACH FORM 393.**

- 1. A DETAILED DEPRECIATION SCHEDULE FOR EQUIPMENT USED TO RECEIVE BASIC SERVICE, SHOWING: DATE PURCHASED; FROM WHOM PURCHASED; COST; DEPRECIATION EXPENSE; AND ACCUMULATED DEPRECIATION. STATE WHAT TYPE OF DEPRECIATION METHOD WAS UTILIZED, STRAIGHT LINE OR ACCELERATED, AND WHY.**
- 2. A CALCULATION SHOWING HOW THE FEDERAL AND STATE TAXES REQUIRED TO PAY FOR THE RETURN ON INVESTMENT WAS ARRIVED AT. (SCHEDULE A, LETTER G)**
- 3. WITH RESPECT TO OPERATING EXPENSES FOR SERVICE (SCHEDULE B) INSTALLATION AND MAINTENANCE OF EQUIPMENT, A SCHEDULE SHOWING THE TOTAL NUMBER OF APPLICABLE EMPLOYEES AND THEIR RESPECTIVE TOTAL YEARLY SALARIES AND BENEFITS. IF A PRO-RATA METHOD IS USED IN ALLOCATING THE TIME AND/OR SALARIES OF THESE EMPLOYEES, AN EXPLANATION AS TO WHY SUCH METHOD WILL BE REQUIRED.**
- 4. A DETAILED EXPLANATION INCLUDING WORKSHEETS OF OTHER TAXES RELATED TO OPERATING EXPENSES FOR SERVICE INSTALLATION AND MAINTENANCE OF EQUIPMENT. (SCHEDULE B)**
- 5. AN EXPLANATION OF THE METHOD USED IN THE UNBUNDLING AND ALLOCATION OF EQUIPMENT COSTS.**
- 6. A STATEMENT SHOWING THE CURRENT AND SEPTEMBER 30, 1992 CHANNEL LINE-UP WHICH IDENTIFIES WHETHER THE CHANNEL IS BROADCAST, NON-BROADCAST OR A PREMIUM CHANNEL AND WHETHER THE CHANNEL IS DELIVERED VIA SATELLITE.**
- 7. A STATEMENT GIVING THE NUMBER OF SUBSCRIBERS FOR THE BASIC SERVICE AS WELL AS FOR THE CABLE PROGRAMMING SERVICE AS OF SEPTEMBER 30, 1992 AND AS OF THE DATE OF THE FILING.**
- 8. A STATEMENT BY THE OPERATOR LISTING ALL SIGNIFICANT INTERPRETATIONS OF FCC REGULATIONS AND ASSUMPTIONS MADE BY THE OPERATOR IN THE COMPLETION OF THE FORM. PLEASE GIVE A DETAILED EXPLANATION OF THE REASONING FOR THE INTERPRETATION OR ASSUMPTION INCLUDING REFERENCES TO APPLICABLE FCC REGULATION.**



## Montgomery County Government

December 9, 1993

Mr. John Evans  
President  
Montgomery Cablevision Limited Partnership  
20 W. Gude Drive  
Rockville, Maryland 20850

RE: Information Request Concerning Rate Regulation

Dear Mr. Evans:

We have received your Form 393 and are in the process of reviewing it. It does not comply with the requirements of the rules and instructions set forth by the Federal Communications Commission ("FCC"). We reserve our right to reject the filing and independently set a rate for that reason, to the extent permitted by applicable law. In addition, we will require additional information from you to complete our review. Initial requests for information follow. In each case, please provide any supporting data or records necessary to replicate the calculation or other method by which you arrived at the Form 393 entries in question. We will require a response by you, or, any successor in interest as franchisee, by January 3, 1994. If more time is needed, please let me know.

Additionally, I have also enclosed a copy of the Office of Consumer Affairs' Recommendation and a proposed Order tolling rates.

1. In order to determine whether you are charging uniform rates and have included all rates subject to regulation on the Form 393, we will need a complete listing of all rates and charges levied on subscribers in the County, including specifically all bulk rates and discount rates. For each rate, explain the basis or qualifying criteria for receiving the rate. If you claim to provide service or equipment free to some subscribers as part of a larger service offering, you should identify the service offering and the equipment or services provided at no charge. For rates or charges other than the rates for the program services themselves, we need a brief explanation of what the rate or charge covers and under what circumstances it is levied. For each rate or charge subject to regulation (other than rates charged to single family homes), you should state whether you have performed an analysis to determine whether the difference between that rate and the rate to residential subscribers for the analogous activity is justified by cost. If you have performed that analysis, please provide it. If you have not provided the analysis, explain how you arrived at the rate, and provide any supporting data or records.

Office of Consumer Affairs

100 Maryland Avenue, Rockville, Maryland 20850, 301/217-7373, TDD # 301/217-2999, FAX # 301/217-7367

2. In order to review your benchmark calculation, we will require:

- (a) the number of subscribers on the system as a whole, as you used it to find the benchmark rate on the benchmark table for Form 393, Lines 121 and 220, together with an explanation of how you arrived at that number and any supporting data or records;
- (b) a detailed explanation as to the manner in which the company determined the number of subscribers listed on Form 393, Worksheet 1 Line 103, and Form 393, Worksheet 2 Line 203. The explanation should note each and every difference in the manner in which the Company counted subscribers for purposes of determining those two numbers. The explanation should also include, but not be limited to, a description of (i) how many subscribers actually paid the fees specified in Worksheet 1, Line 101 and Worksheet 2 Line 201, respectively; (ii) how many subscribers paid less or more than the monthly fee specified; (iii) how much was paid by those subscribers; (iv) how subscribers who paid more or less than the specified amounts were taken into account in calculating the number of subscribers to each reported tier. Your response to this question should include the number of subscribers to each discount or bulk rate, and should provide any supporting data or records.
- (c) a list of the names of the services included in each tier identified on Form 393, Worksheet 1 Line 102, and Form 393, Worksheet 1 Line 202; and the channel on which each programming service identified was carried. Those channels you counted as satellite channels in finding the benchmark rate on the benchmark table should be clearly indicated. If a listed programming service shared a channel with any other service (including a premium or pay-per-view service), you should also identify the service with which the listed service shared the channel, and identify the amount of time each service has been carried during each month from September 1992 to present. For each service you claim is a satellite service for purposes of the benchmark calculation, you should include a short description explaining precisely from whom the service is obtained; how it is transmitted to the Cable System and by whom; whether any changes are made to the service (e.g., additions of text, advertisements) once the service is

obtained, and how those changes are made.

- (d) a detailed description of how you calculated the monthly equipment charges included on Worksheet 1, Line 104, and Worksheet 2, Line 204. Your explanation should describe precisely how you calculated the amounts included on the worksheets and include any supporting data or records. Your explanation should also identify each equipment or service provided to subscribers, the revenues from the provision of which were included at Line 104 or Line 204; and the revenues from the identified services and equipment for each month, January 1992 to the present.

3. In order to review your equipment charges, we require a detailed narrative explaining and the supporting documentation relating to:

- (a) the derivation of each part of the information listed in Form 393, Schedules A and C, Columns A-H for each piece of equipment. In particular, you should explain precisely what data you examined to determine the gross book value separately for each piece of equipment, any adjustments made to the data and the reason the adjustments were made, and how the data or records were then used to derive the cost figures; and provide the supporting data or records. You should identify clearly and separately any "cost" that you claim attributable to overhead, management fees or similar identifiable fee paid to the entity from which the equipment was purchased or leased. If any equipment is leased, you should describe the leasing arrangement in detail, and how that leasing arrangement was reflected on the Form 393.
- (b) affiliate equipment purchases or leases. If the equipment was purchased or leased from an affiliate (as that term is defined in the Cable Act), you should provide the information required in Form 393 for that affiliate, and also submit the information required by question 3(a). This operation should be repeated for each piece of equipment to the point the equipment was purchased or leased from a non-affiliated company.
- (c) the derivation of labor rates and charges, explaining, e.g., whether the labor rates and charges include any bonuses or other compensation paid for selling products or services, or



collecting overdue accounts. For each entry reflecting labor, please provide the number of employees included, the number of contract workers, and the breakdown of titles and responsibilities of these employees, and explain in detail how you determined the number of hours reflected in the entry, providing any supporting data or records. Please explain in detail how you arrived at the percentage allocation in Part III, Line 2, providing any supporting data or records. In addition, please explain the derivation of the total labor hours for maintenance and installation reflected on Line 4 of Part III. Explain whether the maintenance/installation hours on Lines 9, 16, and 23 of Part III are included in the hours on Line 4. If any of the hours on Line 4 are not derived from Lines 9, 16 or 23, please describe and account for such additional hours, providing any supporting data or records.

- (d) If any amount for labor was paid to an affiliate, you should describe precisely what work was performed pursuant to that arrangement, and show the actual cost to the affiliate of the labor, and identify any management fees or similar identifiable fee paid to the affiliate that was responsible for providing the labor. This operation should be repeated to the point the labor was obtained from a non-affiliated company.
- (e) the manner in which the company determined the amount of time required (i) to perform any activity listed in Schedule D; and (ii) any other activity for which a charge will be levied based upon the time or estimated time required to perform the activity (e.g., any repair charges or service call charges). Please provide any supporting data or records.
- (f) the precise manner in which the company determined the amount of time required to perform maintenance and installation of customer equipment and service (Part III, Line 3). The period examined to derive the data should be stated. Any assumptions made by you should be clearly explained. You should state how you allocated costs among tasks where a service call might have included work on both customer and non-customer equipment. You should explain how you interpreted the term "customer service equipment" for purposes of answering this question and state specifically whether it included (i) in-home wiring; and (ii) the drop.

(g) the precise manner in which the company determined the total maintenance/service hours reported at Form 393, Part III Lines 9, 16 and 23. The period examined to derive the data should be stated. Any assumptions made by you should be clearly explained. For example, you should make it clear whether the hours reported reflect the expected hours for the maintenance or service of equipment now being used by you; you should also describe precisely how, if at all, it includes maintenance and service costs associated with equipment you no longer use, or which is in the process of being upgraded.

(h) the derivation of the numbers reported in Schedule B.

4. Please list all rates being charged for equipment and installation in other franchise areas served by you, a parent, or an affiliate within 500 miles of the County.

5. Please list all actual labor rates being charged in other franchise areas served by you, a parent, or an affiliate within 500 miles of the County, if different from the hourly rate included in your rates in this County.

6. Identify any case where the numbers reported on the Form 393 result from the aggregation of data from a larger area or higher corporate level than this franchise area, and explain the aggregation and how costs were allocated to the County franchise area, providing any supporting data or records. For example, if the company identified 1992 equipment costs by aggregating total equipment revenues for its system and then allocating a portion of those revenues to the County, it should so state and describe the allocation.

7. In order to determine whether you complied with the FCC's rate freeze -- and hence whether your Form 393 reflects legal rates -- we require the following information to the extent not already provided in response to the above, together with any supporting data or records:

(a) a list of all recurring rates and charges from March, 1993 to the present (including promotional rates and charges) and, for each rate or charge identified, the period during which the rate or charge was in effect and the number of households paying the identified rate or charge for each month the rate or charge was in effect from March through the present. The company should not lump different rates together even where the rates were for the same service or equipment, unless the rates were identical. For example, any senior citizen discount basic

John Evans  
December 9, 1993  
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rate should be identified separately from any basic rate charged to other subscribers, and the number of subscribers to each service should be identified.

- (b) a list of all non-recurring rates and charges (including promotional rates and charges) from April 5, 1993 to the present and, for each fee and charge identified, the period during which the rate or charge was in effect, the actual revenues associated with such rate or charge for each month for the period January, 1993 to the present, and the number of times the work associated with the charge or rate was performed, whether or not the charge or rate was actually levied. If different rates or charges (or none) were levied for the same work, each such rate or charge, together with the number of times the work was performed at that rate or charge, should be separately identified.

8. In order to determine whether you have accurately reported rates on the Form 393, and to determine whether you have complied with other provisions of our regulations and the FCC's regulations, we will require a copy of all notices provided to subscribers from September, 1992 to the present regarding rates and charges. You need not provide notices that relate solely to services such as HBO, which were sold as premium or pay-per-view services during the period September 1992 - March 1993. However, you must provide notices with respect to any services that you now claim are sold "à la carte," if such services were not sold on a per-channel or per-program basis during September 1992 - March 1993.

If you claim that any information or material supplied in response to this request is confidential pursuant to Section 8 of Executive Regulation 50-93AM, you must clearly identify and segregate such information from the remainder of your response, clearly marking it so that the County may determine where and how such information was used in your rate determinations. In addition, your request for confidential treatment must state the reason why the information should be treated as proprietary and the facts and legal arguments that support those reasons.

Please give me a call if you have any questions concerning the above.

Sincerely,



Robert P. Hunnicutt  
Executive Staff Specialist



## Montgomery County Government

### RECOMMENDATIONS OF THE OFFICE OF CONSUMER AFFAIRS REGARDING BASIC CABLE RATES IN MONTGOMERY COUNTY, MARYLAND

The County notified Montgomery Cablevision Limited Partnership ("MCLP") on October 15, 1993, pursuant to Executive Regulation #50-93AM at § 3.1.1, that its basic service and equipment rates were subject to regulation. On November 15, 1993, MCLP submitted a rate filing with respect to those rates ("Rate Filing"). The Office of Consumer Affairs has (1) received and reviewed the Rate Filing and (2) published a notice that such filing is available for public review and comment, pursuant to Executive Regulation 50-93AM at § 3.2.1. No public comments regarding the Rate Filing were received.

Under applicable federal and County regulations, once a cable operator submits a filing justifying its basic service and equipment rates, the County has 30 days to issue an order (1) approving the rates in whole or in part; (2) disapproving the rates in whole or in part; or (3) tolling the rates in whole or in part. Executive Regulation 50-93AM at § 3.2.2.

Pursuant to its review of the Rate Filing, the Office of Consumer Affairs has determined that further investigation is necessary, and that additional time is required to determine whether the filing comports with applicable law.

Based on its review, the Office of Consumer Affairs believes that there may be inaccuracies in the information used to determine the allowable rate. For example, MCLP appears to be miscalculating the number of channels on the basic tier, and appears to be using incorrect rates in applying the benchmark system established by the Federal Communications Commission ("FCC"). Moreover, MCLP has failed to present evidence supporting all rates it charges for basic service and equipment. In addition, the Office of Consumer Affairs believes that additional review of equipment and installation costs is warranted. An initial request for further information has been submitted to MCLP.

It further appears that MCLP failed to provide the information on the official version of the FCC's Form 393 approved by the Office of Management and Budget. This failure may affect the sufficiency of the filing and the County's ability to review the filing.

The Office of Consumer Affairs requires additional time to review MCLP's proposed rates for basic service and equipment, to permit MCLP to cure any deficiencies in its original filing, and to obtain from MCLP and other sources, the information necessary to ensure that the proposed rates are within the FCC's standards of reasonableness. Therefore, the Office of Consumer Affairs hereby recommends that the County issue an order tolling the existing rates, so that they are collected subject to refund. The Office of Consumer Affairs also recommends that the County conduct further review to determine whether the rates comply with applicable law and regulations.

  
Barbara B. Gregg  
Director, Office of Consumer Affairs

date 12-9-93

Office of Consumer Affairs

**PROPOSED**

**ORDER TOLLING BASIC RATES TO FURTHER REVIEW RATES**

WHEREAS, Montgomery County ("the County") has received and reviewed (1) Montgomery Cablevision Limited Partnership's ("MCLP") rate filing and (2) the recommendation of the Office of Consumer Affairs;

WHEREAS, the Office of Consumer Affairs published a notice that MCLP's rate filing was available for public review and comment, pursuant to Executive Regulation 50-93AM at § 3.2.1, and no public comments regarding the Rate Filing were received; and

WHEREAS, pursuant to such review, and in light of the brief time period the County has had to consider and evaluate matters relevant to determining whether MCLP's basic cable rates comply with applicable law and regulation, the County is presently unable to determine whether the rate complies with the Federal Communications Commission's reasonable rate standard; and

WHEREAS, among other things, the County believes that additional review of equipment and installation costs is warranted; and

WHEREAS, as set forth in the recommendations of the Office of Consumer Affairs, the County believes that there may be inaccuracies in the information used to determine the allowable rate. For example, MCLP appears to be miscalculating the number of channels on the basic tier, and appears to be using incorrect rates in applying the benchmark system established by the Federal Communications Commission ("FCC"); and

WHEREAS, as set forth in the recommendations of the Office of Consumer Affairs, MCLP has failed to present evidence supporting all rates it charges for basic service and equipment; and

WHEREAS, as set forth in the recommendations of the Office of Consumer Affairs, it appears that MCLP has failed to provide the information on the official version of the FCC's Form 393 approved by the Office of Management and Budget. This failure may affect the sufficiency of the filing and the County's ability to review the filing; and

WHEREAS, the County finds that it needs additional time to review MCLP's rates for basic service and equipment, to permit Montgomery Cablevision to cure any deficiencies in its original filing, and to obtain from MCLP and other sources the information necessary to ensure that the proposed rates are within the FCC's standards of reasonableness;

THEREFORE, it is hereby ordered that:

Sec. 1 Pursuant to 47 C.F.R. § 76.933(b), the County hereby tolls the 30-day deadline set forth in 47 C.F.R. § 76.933(a) for up to 90 days to request and/or consider additional information.

**ORDER TOLLING BASIC RATES TO FURTHER REVIEW RATES**

Page 2

**Sec. 2** MCLP's current rates for basic service and equipment are being and shall be collected subject to refund and further investigation in accordance with applicable law. MCLP must maintain records so that it can refund to subscribers any amounts later found to be unreasonable, plus interest. Nothing in this Order approves or endorses the rates now in effect, and those rates must be reduced to the extent those rates violate the FCC-ordered rate freeze or other applicable laws or contracts.

**Sec. 3** MCLP's current rates for basic service and equipment may not be increased without the prior approval of the County.

**Sec. 4** MCLP must promptly respond to data requests and may cure any deficiency in its filing by submitting a complete and correct supplementary filing within 20 days of the date of this Order.

**Sec. 5** This Order is the Order required by 47 C.F.R. § 76.933 and Executive Regulation 50-93AM § 3.2.2, and is effective on the date it is signed.

**Sec. 6** Public notice shall be given that this Order has issued and is available for review.

\_\_\_\_\_  
Neal Potter  
County Executive

date \_\_\_\_\_



## THE PRINCE GEORGE'S COUNTY GOVERNMENT



December 9, 1993

Mr. Roger Wells  
Regional Vice President and General Manager  
Metrovision  
9315 Largo Drive West  
Landover, Maryland 20785

Dear Mr. Wells:

We have received your Form 393 and are in the process of reviewing it. We note that it does not fully comply with the requirements of the rules and instructions set forth by the Federal Communications Commission ("FCC"). We reserve our right to reject the filing and independently set a rate for that reason, to the extent permitted by applicable law. In addition, we will require further information from you to complete our review. Initial requests for information follow. In each case, please provide any supporting data or records necessary to replicate the calculation or other method by which you arrived at the Form 393 entries in question. We will require a response in five days. If more time is needed, please let us know.

1. In order to determine whether you are charging uniform rates and have included all rates subject to regulation on the Form 393, we will need a complete listing of all rates and charges levied on subscribers in the County, including specifically all bulk rates and discount rates. If you claim to provide service or equipment free to some subscribers as part of a larger service offering, you should identify the service offering and the equipment or services provided at no charge. For rates or charges other than the rates for the program services or tiers themselves, we need a brief explanation of what the rate or charge covers and under what circumstances it is levied. For each rate or charge subject to regulation (other than rates charged to single family homes), you should state whether you have performed an analysis to determine whether the difference between that rate and the rate to residential subscribers for the analogous activity is justified by cost. If you have performed that analysis, please provide it. If you have not provided the analysis, explain how you arrived at the rate, and provide any supporting data or records.

2. In order to review your benchmark calculation, we will require:

- (a) the number of subscribers on the system as a whole, as you used it to find the benchmark rate on the benchmark table for Form 393, Lines 121 and 220, together with an explanation of how you arrived at that number and any supporting data or records;
- (b) a detailed explanation as to the manner in which the company determined the number of subscribers listed on Form 393, Worksheet 1 Line 103, and Form 393, Worksheet 2 Line 203. The explanation should note each and every difference in the manner in which the Company counted subscribers for purposes of determining those two numbers. The explanation should also include, but not be limited to, a description of (i) how many subscribers actually paid the fees specified in Worksheet 1, Line 101 and Worksheet 2 Line 201, respectively; (ii) how many subscribers paid less or more than the monthly fee specified; (iii) how much was paid by those subscribers; (iv) how subscribers who paid more or less than the specified amounts were taken into account in calculating the number of subscribers to each reported tier. Your response to this question should include the number of subscribers to each discount or bulk rate, and should provide any supporting data or records.
- (c) a list of the names of the programming services included in each tier identified on Form 393, Worksheet 1 Line 102, and Form 393, Worksheet 1 Line 202; and the channel on which each programming service identified was carried. Those channels you counted as satellite channels in finding the benchmark rate on the benchmark table should be clearly indicated. If a listed programming service shared a channel with any other service (including a premium or pay-per-view service), you should also identify the service with which the listed service shared the channel, and identify the amount of time each service has



been carried during each month from September 1992 to present. For each service you claim is a satellite service for purposes of the benchmark calculation, you should include a short description explaining precisely from whom the service is obtained; how it is transmitted to the Cable System and by whom; whether any changes are made to the service (i.e., additions of text, advertisements, etc.) once the service is obtained, and how those changes are made.

- (d) a detailed description of how you calculated the monthly equipment revenues included on Worksheet 1, Line 104, and Worksheet 2, Line 204. Your explanation should describe precisely how you calculated the amounts included on the worksheets and include any supporting data or records. Your explanation should also identify each equipment or service provided to subscribers, the revenues from the provision of which were included at Line 104 or Line 204; and the revenues from the identified services and equipment for each month, January 1992 to the present.

3. In order to review your equipment charges, we require a detailed narrative explaining, and the supporting documentation relating to:

- (a) the derivation of each part of the information listed in Form 393, Schedules A and C, Columns A-H for each piece of equipment. In particular, you should explain precisely what data or records you examined to determine the gross book value separately for each piece of equipment, any adjustments made to the data and the reason the adjustments were made, and how the data or records were then used to derive the cost figures; and provide the supporting data or records. You should identify clearly and separately any "cost" that you claim attributable to overhead, management fees or similar identifiable fee paid to the entity from which the equipment was purchased or leased.

If any equipment is leased, you should describe the leasing arrangement in detail, and how that leasing arrangement was reflected on the Form 393.

- (b) affiliate equipment purchases or leases. If the equipment was purchased or leased from an affiliate (as that term is defined in the Cable Act), you should provide the information required in Form 393 for that affiliate, and also submit the information required by 3(a). This operation should be repeated for each piece of equipment to the point the equipment was purchased or leased from a non-affiliated company.
- (c) the derivation of labor rates and charges, explaining, e.g., whether the labor rates and charges include any bonuses or other compensation paid for selling products or services, or collecting overdue accounts. For each entry reflecting labor, please provide the number of employees included, the number of contract workers, and the breakdown of titles and responsibilities of these employees, and explain in detail how you determined the number of hours reflected in the entry, providing any supporting data or records. Please explain in detail how you arrived at the percentage allocation in Part III, Line 2, providing any supporting data or records. In addition, please explain the derivation of the total labor hours for maintenance and installation reflected on Line 4 of Part III. Explain whether the maintenance/installation hours on Lines 9, 16, and 23 of Part III are included in the hours on Line 4. If any of the hours on Line 4 are not derived from Lines 9, 16 or 23, please describe and account for such additional hours, providing any supporting data or records.
- (d) If any amount for labor was paid to an affiliate, you should describe precisely what work was performed pursuant to that arrangement, and show the actual cost to the affiliate of the labor, and identify any management fees or similar identifiable fee paid to the affiliate that was responsible for providing the labor. This

operation should be repeated to the point the labor was obtained from a non-affiliated company.

- (e) the manner in which the company determined the amount of time required (1) to perform any activity listed in Schedule D; and (2) any other activity for which a charge will be levied based upon the time or estimated time required to perform the activity (e.g., any repair charges or service call charges). Please provide any supporting data or records.
- (f) the precise manner in which the company determined the amount of time required to perform maintenance and installation of customer equipment and service (Part III, Line 3). The period examined to derive the data should be stated. Any assumptions made by you should be clearly explained. You should state how you allocated costs among tasks where a service call might have included work on both customer and non-customer equipment. You should explain how you interpreted the term "customer service equipment" for purposes of answering this question and state specifically whether it included (i) in-home wiring; and (ii) the drop.
- (g) the precise manner in which the company determined the total maintenance/service hours reported at Form 393, Part III Lines 9, 16 and 23. The period examined to derive the data should be stated. Any assumptions made by you should be clearly explained. For example, you should make it clear whether the hours reported reflect the expected hours for the maintenance or service of equipment now being used by you; you should also describe precisely how, if at all, it includes maintenance and service costs associated with equipment you no longer use, or which is in the process of being upgraded.
- (h) the derivation of the numbers reported in Schedule B.

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4. Please list all rates being charged for equipment and installation in other franchise areas served by you or by an affiliate within 500 miles of the County.

5. Please list the actual labor rates being charged in other franchise areas served by you or by an affiliate within 500 miles of the County, if different from the hourly rate included in your rates in this County.

6. Identify any case where the numbers reported on the Form 393 result from the aggregation of data from a larger area or higher corporate level than this franchise area, and explain the aggregation and how costs were allocated to the County franchise area, providing any supporting data or records. For example, if the company identified 1992 equipment costs by aggregating total equipment revenues for its system and then allocating a portion of these revenues to the County, it should so state and describe the allocation.

7. In order to determine whether you complied with the FCC's rate freeze -- and hence whether your Form 393 reflects legal rates -- we require the following information to the extent not already provided in response to the above, together with any supporting data or records:

- (a) a list of all recurring rates and charges from March, 1993 to the present (including promotional rates and charges) and, for each rate or charge identified, the period during which the rate or charge was in effect and the number of households paying the identified rate or charge for each month the rate or charge was in effect from March through the present. The company should not lump different rates together even where the rates were for the same service or equipment, unless the rates were identical. For example, any senior citizen discount basic rate should be identified separately from any basic rate charged to other subscribers, and the number of subscribers to each service should be identified.
- (b) a list of all non-recurring rates and charges (including promotional rates and charges) from April 5, 1993 to the present and, for each fee and charge identified, the period during which the

rate or charge was in effect, the actual revenues associated with such rate or charge for each month for the period January, 1993 to the present, and the number of times the work associated with the charge or rate was performed, whether or not the charge or rate was actually levied. If different rates or charges (or none) were levied for the same work, each such rate or charge, together with the number of times the work was performed at that rate or charge, should be separately identified.

8. In order to determine whether you have accurately reported rates on the Form 393, and to determine whether you have complied with other provisions of our regulations and the FCC's regulations, we will require a copy of all notices provided to subscribers from September, 1992 to the present regarding rates and charges. ~~You need not provide notices that relate solely to services such as HBO, which were sold as premium or pay-per-view services during the period September 1992 - March 1993.~~ However, you must provide notices with respect to any services that you now claim are sold "à la carte," if such services were not sold on a per-channel or per-program basis during September 1992 - March 1993.

9. Page 4 of Form 393 indicates that you have added "drop material charges" to the permitted rates for installations derived in Part III, Step B. Please explain in detail how these amounts were derived, providing any supporting data or records, and explain why you have added them to the permitted rates calculated according to the instructions on Form 393.

10. A note to Line 33 of Part III, Step C, indicates that an adjustment has been made relating to Andrews Air Force Base. Please provide a complete explanation, together with any supporting data or records, for this adjustment.

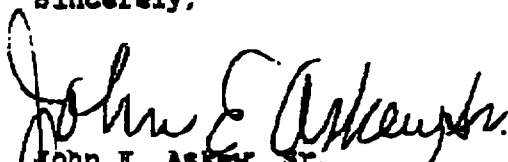
11. Please provide the attached explanations required by the instructions to Form 393 for Part III, Lines 2, 4, 9, 16, and 23.

12. On Schedule A, two columns have been added following Column I. Please explain in detail the function of the entries in these columns, their derivation, and why you include them on Form 353, providing any supporting data or records. [Item questioned may work to County's advantage.]
13. A column heading in Schedule B suggests that expense figures were derived from a general ledger balance as of July 31, 1992. Please explain in detail how these figures were derived, providing any supporting data or records, and why you used this method to complete Schedule B. [Item questioned may work to County's advantage.]
14. Please explain in detail why and how you made the allocations indicated at the top of Schedule C. [Item questioned may work to County's advantage.]

If you claim that any information or materials supplied in response to this request is confidential pursuant to section 5A-125.01(d) of the Prince George's County Code, as amended, you must clearly identify and segregate such information from the remainder of your response, clearly marking it so that the County may determine where and how such information was used in your rate determinations. In addition, your request for confidential treatment must state the reason why the information should be treated as proprietary and the facts and legal arguments that support those reasons.

Please give me a call if you have any questions concerning the above.

Sincerely,

  
John E. Askew, Sr.  
Executive Director  
Cable Television Commission